

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                           |   |                              |
|---------------------------|---|------------------------------|
| <b>BRUCE W. DRAPER,</b>   | ) |                              |
|                           | ) |                              |
| <b>Plaintiff,</b>         | ) |                              |
|                           | ) |                              |
| <b>vs.</b>                | ) | <b>Case No. CIV-07-237-W</b> |
|                           | ) |                              |
| <b>DON BOWAN, et al.,</b> | ) |                              |
|                           | ) |                              |
| <b>Defendants.</b>        | ) |                              |

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. United States District Judge Lee R. West has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice due to Plaintiff's failure to pay the filing fee.

By order of this Court dated March 2, 2007, Plaintiff was required to pay an initial partial filing fee in the amount of \$9.00 as calculated pursuant to 28 U.S.C. § 1915(b)(1). Because Plaintiff had tendered \$5.00 with his complaint, he was ordered to pay the remaining \$4.00 on or before March 22, 2007. Plaintiff was advised that failure to pay the initial partial filing fee or show cause in writing for his failure to do so, could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that Plaintiff has not paid the initial partial filing fee. Therefore, the undersigned recommends that this action be dismissed without prejudice. Local Civil Rule 3.4(b); Cosby v. Meadors, 351 F.3d 1324, 1326-33 (10<sup>th</sup> Cir.

2003) (upholding dismissal of civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

**RECOMMENDATION**

Accordingly, because Plaintiff has neither paid the partial filing fee as ordered by this court nor shown good cause for such failure, it is recommended that this action be dismissed without prejudice to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by the 2nd day of May, 2007, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 12th day of April, 2007.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE